AFTERNOON SESSION

Friday, April 19, 1907

The meeting was called to order at 2.30 p. m., Hon. John W. Foster in the chair.

The CHAIRMAN. Our President, Secretary Root, is detained this afternoon by necessary official engagements, and I was asked as one of the Vice-Presidents to take his place for this afternoon's session.

The subject for consideration at this session is as follows:

"Is the forcible collection of contract debts in the interest of international justice and peace?"

The first paper will be by Mr. Crammond Kennedy, of Washington City.

ADDRESS OF MR. CRAMMOND KENNEDY, OF WASHINGTON, D. C.

Mr. President and Fellow-Members of the Society: The question, in the discussion of which I have been invited to participate, is stated in the program as follows:

"Is the forcible collection of contract debts in the interest of international justice and peace?"

The form of the question is doubtless not intended to imply that it is the practice of nations to enforce internationally the payment of "contract debts," but rather to suggest the inquiry whether *if* this were the rule it would be conducive to international justice and peace.

A recognized authority, speaking from the point of view of municipal law, says that "the obligation of contract is an obligation created and determined by the will of the parties;" and that "the *enforcement* of good faith in matters of bargain and promise is one of the most important functions of legal justice in modern civilized countries. It might not be too much to say that, next after keeping

the peace and securing property against violence and fraud, it is the most important." [1]

In all civilized countries, questions arising upon contracts between individuals, native and foreign, are left to the courts, and, as a rule, it is only when justice is judicially denied to the foreigner that his government has a recognized right to intervene on his behalf.

But the case may be different when a government itself has entered into a contract with an individual of another nationality.

As to the situation created by such a transaction, Vattel says:

Conventions and contracts which the sovereign in his sovereign character, and in the name of the state, forms with private individuals of a foreign nation fall under the rules we have laid down with respect to public treaties. In fact, when a sovereign enters into a contract with one who is wholly independent of him and of the state, whether it be with a private person or with a nation or sovereign, this circumstance does not produce any difference in the rights of the parties. If the private person who has treated with a sovereign is his subject, the rights of each party in this case also are the same; *but there is a difference in the manner of deciding the controversies which may arise from the contract.* That private person, *being a subject of the state,* is obliged to submit his pretensions to the established courts of justice.[2]

But if the ruler of the state, or, as we say, the government, undertakes to deal itself with a contract which it has made with a citizen or subject of *another* power; if, for example, instead of appealing to its own courts, when they have jurisdiction, it decides for itself that the individual party to the contract has committed a breach and thereupon annuls the right or seizes the property which is the subject-matter of the contract, the government of the individual so wronged may at once intervene, because the state itself has denied

[1] Sir Frederick Pollock, "Contracts," Encyc. Brit., 10th ed., Vol. XXVII, pp. 217, 220.

[2] Law of Nations, Book II, Ch. XIV, § 214. Phillimore cites Grotius for the same distinction. "The difference," he observes, "between subjects and foreigners is that the former must submit to the authority of the law, even when it is the instrument of injustice; but the latter are under no such obligation, but may by force compel the execution of justice on their behalf." *Exteri autem jus habent cogendi.* (Phill. Inter. Law, III (2d ed.), 23.

judicial justice and acted as judge in its own cause. On this point Mr. Hall observes:

When an injury or injustice *is committed by the government itself* it is often idle to appeal to the courts. In such cases, and in others in which the act of the government has been of a flagrant character, the right naturally arises of immediately exacting reparation by such means as may be appropriate.[3]

Halleck also makes the same distinction:

There can be no doubt with respect to its responsibility [that of the state] for the acts of its rulers, whether they belong to the executive, legislative, or judicial department of the government, so far as they are done in their official capacity. States have relations with each other only through their respective governments, and in international jurisprudence the *government* is the state, whether it be a despotism or a pure republic; whether it be a mere *de facto* government organized for a temporary purpose, or one deriving its authority from long ages of legitimate descent.[4]

When Secretary of State, Mr. Cass elucidated the subject as follows:

It is quite true that under ordinary circumstances when citizens of the United States go to foreign countries they go with an implied undertaking that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or their contracts, or will undertake to determine any disputes to which they may give rise. The case, however, is very much changed when no impartial tribunals can be said to exist in a foreign country, or when they have been arbitrarily controlled by the government to the injury of our citizens.

So also [and this is the point I desire to emphasize] the case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time and labor and capital from a reliance upon its own good faith and justice.[5]

[3] Hall's Inter. Law, 4th ed., § 87, p. 291.

[4] Halleck's Inter. Law, Ch. XI, §§ 3, 4, citing authorities.

[5] Wharton's Inter. Law Dig., § 230, p. 615.

Said Mr. Cass again on another occasion:

What the United States demand is that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen or shall arise respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any; or, if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to.

Without some security of this kind, this Government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable on behalf of its citizens who may have been or who may be injured by such unjust assumption of power.[6]

The government, if it wishes to abrogate a contract made with a subject of another power, is as much bound to appeal to the courts for rescission or the proper redress as the individual is, if he wishes to enforce the contract, or to rescind it, or to recover damages; and if the government takes the law into its own hands and settles the questions involved *ex parte* and arbitrarily, the nation of the individual may at once intervene, because it is injured itself in the injury done to one of its members by the one-sided and arbitrary action of another state.

In a recent arbitration a majority of the arbitrators held:

In any case, by the rule of natural justice obtaining universally throughout the world, wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal.

If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just grounds for complaint that under the organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been *to have itself appealed to the courts against the company,* and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration and solemn judgment, have invoked and received the remedy sought.[7]

[6] Wharton's Inter. Law Dig., § 232, p. 66.

[7] Opinion of Sir Henry Strong, Chief Justice of Canada, and Mr. Don M. Dick-

As to national debts, Vattel says:

When a lawful power contracts in the name of the state, it lays an obligation on the nation itself, and consequently on all the future rulers of the society. When, therefore, a prince has the power to form a contract in the name of the state, he lays an obligation on all his successors, and these are not less bound than himself to fulfill his engagements. * * * Loans contracted for the service of the state, debts incurred in the administration of public affairs, are contracts in all the strictness of law, and obligatory on the state and the whole nation, which is indispensably bound to discharge those debts.

When once they have been contracted by lawful authority, the right of the creditor is indefeasible.

Whether the money borrowed has been turned to the advantage of the state, or squandered in foolish expenses, is no concern of the person who has lent it; he has intrusted the nation with his property, and the nation is bound to restore it to him again; it is so much the worse for her if she has committed the management of her affairs to improper hands.[8]

Mr. Luis M. Drago, to whose so-called "doctrine" I am going to invite your attention, admits the sanctity of these national obligations. In his much-discussed note of December 29, 1902, Mr. Drago says:

We in no wise pretend that South American nations are, from any point of view, exempt from the responsibility of all sorts which violations of the international law impose on civilized peoples. We do not nor can we pretend that these countries occupy an exceptional position in their relations with European powers, *which have the indubitable right to protect their subjects as completely as in any other part of the world against the persecutions and injustices of which they may be the victims.*

The only principle [he continues] which the Argentine Republic maintains and which it would with great satisfaction see adopted, in view of the events in Venezuela, by a nation that enjoys such great authority and prestige as does the United States, is the principle, already accepted, that there can be no territorial expansion in

inson, as arbitrators in the case of the Salvador Commercial Company against the Republic of Salvador. (For. Rels., 1902, p. 871.)

[8] Vattel, Book II, Ch. XIV, §§ 215, 216.

America on the part of Europe, nor any oppression of the people of this continent, *because our unfortunate financial situation may compel some one of them to postpone the fulfillment of its promises.* In a word, the principle she would like to see recognized is this: That *the public debt cannot [should not] occasion armed intervention nor even the actual occupation of the territory of American nations by a European power.*[9]

This evident reference to the Monroe Doctrine is somewhat remarkable because it seems to imply that the occupation of the territory of one American nation by another *American* nation *might* be occasioned by the "public debt."[10] But it is clear that the question whether "the public debt" of any nation may or may not "occasion armed intervention," by a European or any other power, *depends, and must always depend, to a large extent, on the conduct of the debtor government.*

The occasion of Mr. Drago's note was the joint blockade of the Venezuelan ports by Great Britain, Germany, and Italy in December, 1902, instituted for the purpose of collecting the claims of their subjects against that Government. Mr. Drago was Minister of Foreign Relations of the Argentine Republic, and his note, under date of December 29, 1902, was addressed to Mr. Martin Garcia

[9] For. Rels., 1903, pp. 3, 4. Mr. Drago's note is also printed in the Supplement to the first number of the AMERICAN JOURNAL OF INTERNATIONAL LAW, January, 1907.

In his able and interesting article on "International Law and the Drago Doctrine," in the North American Review of October 5, 1906, Mr. George Winfield Scott says that "Dr. Drago seems to have expressed no doubts about the legal right of creditor states to force the payment of those pecuniary claims which have their origin in the ownership of the bonds of a debtor state." But, on the contrary, Dr. Drago declares that "it can not be admitted that a debtor government should be deprived of the *right* to choose the manner and time of payment" — no matter how long it may have been in default. There are other expressions in his note to the same effect which can not be expected to be popular with long-deferred creditors or to command the unqualified assent of their governments.

[10] In 1900 instructions were sent to all Argentine and Brazilian representatives abroad to lose no opportunity to advocate the maintenance of peace in South America and *to discountenance the idea of any South American government acquiring an extension of territory by force of arms.* (Encyc. Brit., 10th ed., Vol. XXVI, p. 619.)

Merou, minister of that country at this capital. Mr. Merou, on the 20th of that month, had communicated the news of this tripartite intervention to Mr. Drago, by cable, and Mr. Drago, in the spirit of Latin-American brotherhood, made it the occasion of communicating to the United States, through the Argentine legation at Washington, the views of his Government on the collection of the public debt by force — a branch of the question which is now before us.[11]

My main purpose in this paper will be to show that the armed demonstration of the three Powers against Venezuela was not originally caused by any default on her part in the payment of her public debt (principal or interest), but by injurious acts of quite a different character; and that Mr. Drago's note has had an unfortunate effect in obscuring the moving causes and the real lesson of that remarkable proceeding.

Mr. Drago commences by saying that, according to information he had received from Mr. Merou —

> The origin of the disagreement is, in part, the damages suffered by subjects of the claimant nations during the revolutions and wars that have recently occurred within the borders of the Republic mentioned [Venezuela], and in part also the fact that *certain payments on the external debt of the nation have not been met at the proper time.*

And he observes that, "leaving out of consideration the first class of claims," his Government has deemed it expedient to transmit to Mr. Merou "some considerations with reference to the *forcible collection of the public debt suggested by the events that have taken place.*"

This, as I have said, is a branch of the subject we have now before us, and as the tripartite blockade is quite generally, and, in my opinion, erroneously, regarded as an instance of the collection of the public debt of a government by armed intervention, it may be worth while to inquire whether the blockading Governments would have resorted to force if their only complaint against Venezuela had been (to use Mr. Drago's expression) that "certain payments on the external debt of the nation had not been met at the proper time."

[11] For Mr. Hay's reply to Mr. Drago's note, see For. Rels., 1903, pp. 5, 6, and *infra*, p. 117, note.

The breaches of contract by the Venezuelan Government, of which Germany originally complained, did not relate to defaults in payment of principal or interest on Venezuelan bonds held by German subjects. No such complaint seems to have been mentioned as the original or moving cause for the forcible measures adopted by Germany. And it is to be borne in mind that the German Government proposed a settlement of the claims in question by arbitration six months before she resorted to compulsion. It is true that Germany had been pressing certain contractual claims of her subjects upon the attention of the Venezuelan Government; but it also appears from the memorandum which was presented by the Imperial Chancellor to the Reichstag that —

During the civil wars the Germans settled in Venezuela had, up to 1900, suffered through forced loans, the seizure of cattle, and the pillage of their homes and estates, a loss of about 1,700,000 bolivars, and during the last civil war that amount has been increased by about 3,000,000 bolivars.

It thus appears that *forced loans, seizures, and pillage* were among the original causes of Germany's final appeal to force. It was not simply, however, for these acts of violence that Germany joined with Great Britain and Italy in blockading Venezuela's ports, but rather for her continued refusal either to make compensation for these wrongs or to provide a satisfactory tribunal in which the German claims might be examined and adjudicated; for, as already said, Germany had offered to submit her claims to arbitration six months before she resorted to compulsion. It can not be doubted that Great Britain and Italy would also have agreed to arbitration if Venezuela had recognized (as she afterwards did) her liability (in principle) for the unlawful acts of violence committed by her officers and agents on the person and property of subjects of those powers.[12]

[12] The Hague Tribunal found as matter of fact "that since 1901 the Government of Venezuela categorically refused to submit its disputes with Germany and Great Britain to arbitration, *which was proposed several times*, and especially by the note of the German Government of July 16, 1901." (Penfield's Report of the Hague Arbitration, p. 108; see also For. Rels., 1904, p. 507, for the decision of the Tribunal.)

Germany's ground of complaint, which was of the most serious kind, is brought out in the Chancellor's memorandum as follows:

As the result of numerous applications the Venezuelan Government, on January 24, 1901, issued a decree by which a commission *consisting solely of Venezuelan officials* was to decide upon all claims. That decree appeared to be unsatisfactory because, in the first place, all claims originating before the Presidency of Señor Castro were ignored, and, in the second place, any diplomatic interventions were precluded; and, in the third place, payments were only to be made with bonds of a new revolutionary loan, which, in the light of previous experiences, would evidently be almost worthless. After every attempt on the part of the minister resident at Caracas to get the decree altered on these three points had failed, the minister declared plainly that the Imperial Government now felt compelled to refuse to recognize the decree altogether.

It is to be observed that protests had been made by the United States, Spain, and the Netherlands, as well as by the blockading powers, against this Venezuelan decree under which a domestic commission, *composed entirely of Venezuelan officials,* was offered by Venezuela as the only means for an examination and settlement of these international claims.[13]

But [said the German Chancellor] as Venezuela insisted that foreigners could not be treated differently from Venezuelan subjects, and that the claims must be considered as coming within the scope of internal affairs, the Imperial Government examined the German claims itself, and, as far as they appeared well founded, made the Venezuelan Government responsible for them. Venezuela thereupon held out the prospect of a satisfactory solution through Congress, but the latter simply again took up the same unsatisfactory decree.

[13] For. Rels., 1903, p. 430.

The position taken by Venezuela in regard to a settlement of these war claims of foreigners was stated by her Minister of Foreign Relations, Mr. Eduardo Blanco, to Mr. Juan Pablo Rivas, Italian minister resident at Caracas, May 2, 1901, as follows:

"The decree of January 24, last past, so far as it relates to such claims, and the other provisions therein cited, in so far as they are applicable, *constitute the only rule which those interested can employ for the examination of the rights or titles which they allege.*" (Ralston's Venezuelan Arbitrations, appendix, 992.)

Venezuela declined further discussion, maintaining that the settlement of foreign war claims by diplomatic means was out of the question. That [said the Chancellor] is not in accordance with international law.[14]

So far there is no suggestion that Germany resorted to compulsion because (to use Mr. Drago's phrase) "certain payments on the external debt of the nation had not been met at the proper time."

It seems rather to have been for acts of violence perpetrated upon German subjects and for a refusal to provide a satisfactory tribunal for their examination and redress that Germany joined with Great Britain and Italy in bringing Venezuela to terms by force. This appears in the closing sentence of the Chancellor's memorandum, which I now read:

Consequently, as the whole attitude of the Venezuelan Government up to the present indicated only an endeavor to deny foreign claims the settlement that is due to them according to international law, and as, moreover, in the last civil war Germans have been treated by the Venezuelan troops with especial violence, which, if it remains unpunished, might give rise to the impression that Germans in Venezuela are to be left unprotected to the mercy of foreign tyranny, the imperial chargé d'affaires at Caracas on December 7 handed to the Venezuelan Government an ultimatum demanding an immediate payment of the war claims up to [the year] 1900, and a satisfactory settlement regarding the fixing and guaranteeing of the amount of the claims arising out of the recent civil war. At the same time the claims of German firms for the building of a slaughterhouse at Caracas and those of the German Great Venezuelan Railway Company for the guaranteed interests due to them are to be settled. It was finally stated in the ultimatum [presented by Germany to Venezuela] that should a satisfactory reply not be immediately forthcoming the Imperial Government would, to its regret, be compelled itself to take measures for the satisfaction of the German claims.[15]

It thus appears that so far as Germany was concerned her aggressive action was not based upon or caused originally by Venezuela's default in payment of the principal or interest of her public debt

[14] For. Rels., 1903, pp. 419, 420.

[15] For. Rels., 1903, pp. 419, 420; see also pp. 429–431.

held by German subjects, although at that moment the bulk of the Venezuelan 5 per cent. loan of 1896 was in the hands of Germans and in default. It so happened, however, and very naturally, that when the Venezuelan Government yielded to the pressure of the blockade and entered into negotiations for terms, a settlement of all outstanding differences was deemed desirable, and accordingly the following provision was inserted in the protocol of February 13, 1903, (Article VI) between Germany and Venezuela:

> The Venezuelan Government undertakes to make a new satisfactory arrangement to settle simultaneously the 5 per cent. Venezuelan loan of 1896, which is chiefly in German hands, *and the entire exterior debt.* In this arrangement the state revenues to be employed for the services of the debt are to be determined without prejudice to the obligations already existing.[16]

Neither the moderation of this provision should be overlooked, nor the fact that it inured to the benefit of all the foreign holders of Venezuela's public bonds, no matter where or by whom they might be held.

A somewhat similar but not identical provision was made in Article VI of the British-Venezuelan protocol of the same date, to wit:

> The Venezuelan Government further undertakes to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.[17]

Article VII of the Italian-Venezuelan protocol of the same date was to the same effect.[18] There was in none of these articles any demand for immediate payment or any discrimination against any of the bondholders on account of their nationality; and it does not appear that any of the peace powers made any protest or objection

[16] Venezuelan Arbitrations of 1903, Ralston's Report, appendix, p. 1046; see also Penfield's Report of the Hague Arbitration, p. 25.

[17] Venezuelan Arbitrations of 1903, Ralston's Report, appendix, p. 1042.

[18] *Ibid.*, p. 1044. See also Penfield's Report of the Hague Arbitration, pp. 23–31.

to the arrangement, or, indeed, to any of the proceedings of the blockading Powers, all three of whom, of their own accord, had previously notified the United States that no permanent occupation of territory was intended.[19]

This mild and considerate provision for a future arrangement for the benefit of all the holders of Venezuela's public debt, in whatever countries they might reside, is in striking contrast to the peremptory satisfaction demanded by all three Governments, and accorded, under compulsion, by Venezuela for the unlawful acts of violence suffered at the hands of her nationals, in time of internecine strife, by German, British, and Italian subjects resident in that country. In Article I of the German-Venezuelan protocol of February 13, 1903, the Venezuelan Government (doubtless for the purpose of getting rid of the blockade) recognized "in principle" the justice of the claims of German subjects presented by the Imperial German Government. A similar recognition was expressed in the protocol with Great Britain and Italy. In all three of the protocols a clearly defined distinction was made between the different classes of claims — those arising from wanton spoliation, unlawful seizure, and personal violence having precedence.[20]

In Article II of the German-Venezuelan protocol the amount of the German claims originating from the Venezuelan civil wars of 1898–

[19] Lord Landsdowne: "It is not intended to land a British force and still less to occupy Venezuelan territory." (For. Rels., 1903, pp. 453, 476.)

"We also declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory." (Promemoria of the Imperial German Embassy, December 11, 1901, For. Rels., 1901, p. 194.)

Mr. Hay refers to this assurance in his memorandum of the 16th of the same month, and, in the name of the President, expresses his appreciation of the courtesy of the German Government, and, while "not regarding himself as called upon to enter into the consideration of the claims in question, believes that no measures will be taken in this matter by the agents of the German Government which are not in accordance with the well-known purpose, above set forth, of His Majesty the German Emperor." (For. Rels., 1901, p. 195.)

[20] Two Germans were taken prisoners on October 20, 1902, near Carupano, by a revolutionary detachment with the intention of extorting money from them, and to that end "they were insulted, assaulted, robbed, bound to a post, threatened with death, and *thrown into a house infected by smallpox*, in order that

1900 was fixed by the German Government at 1,718,815 bolivars, on account of which the Venezuelan Government undertook to pay "immediately" the sum of £5,500, equal to 137,000 bolivars, and the balance in five equal monthly installments by bills of exchange to be drawn "immediately" in favor of the Imperial German diplomatic ambassador at Washington. This article also provided that, if the Venezuelan Government failed to redeem any of these bills, the payment should be made from the customs receipts of La Guayra and Porto Cabello, and the administration of both ports should be put in charge of Belgian custom-house officials until the complete extinction of the said debt.[21]

In Article II of the Italian-Venezuelan protocol of February 13, 1903, the payment of this class of claims was described "as a satisfaction of the point of honor," and in Article III the Venezuelan Government recognized and promised to pay the Italian claims "of the first rank," derived from the revolutions of 1898–1900, amounting to 2,810,255 bolivars, "without any revision or objection." [22]

The same precedence was given to claims founded on unlawful

the payment of the sum demanded might be accomplished." Part of the claim in one of these cases was for a rupture suffered when the claimant was fastened to the post. (Ralston's Venezuelan Arbitrations of 1903, p. 547.)

Another German who would not give up his mule, on which he was riding, at the demand of a Venezuelan army officer, was attacked by another officer with his saber and seriously wounded. (*Ibid.*, 578.)

These acts of violence were by no means confined to subjects of the blockading powers.

A Hollander, representing important houses in the United States and Europe, was publicly stripped at La Guayra and exposed to the derision of the bystanders by police officers who went unpunished. (*Ibid.*, p. 914.)

A Frenchman of high standing, who merely requested that a requisition made upon him by a Venezuelan officer should be put in writing, was summoned to headquarters. Being questioned by the general in the midst of his staff and summoned to obey, M. Maninat did not refuse, but renewed his request for a written order, whereupon one of the Venezuelan officers struck him with a saber and "laid open his face from the forehead to the ear." (*Ibid.*, p. 51.)

[21] Venezuelan Arbitrations of 1903, Ralston's Report, appendix, p. 1045; Penfield's Report of the Hague Arbitration, p. 23.

[22] Venezuelan Arbitrations of 1903, Ralston's Report, appendix, p. 1045; Penfield's Report of the Hague Arbitration, p. 23.

violence in the British-Venezuelan protocol, by Article II of which the Venezuelan Government agreed to satisfy at once, by payment in cash, or its equivalent, the claims of British subjects, which amounted to about £5,500, arising out of *the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects by citizens of Venezuela.*[23]

The other British claims were to be submitted to a mixed commission, which should examine the same and decide the amount to be awarded in satisfaction of each claim. Venezuela also agreed with Great Britain, in Article VI, to enter into a fresh agreement, as specified in the German and Italian protocols, respecting her external debt, with a view to the satisfaction of the claims of the bondholders.[24]

It thus appears (*a*) that it was not on account of any default of payment of principal or interest on her public debt that Venezuelan ports were blockaded by the three Powers; and (*b*) that in the peace protocols preference was given to those claims arising out of unlawful acts of violence — peremptory payment of which was exacted — and this compulsory settlement was simply made the occasion for obtaining a promise from Venezuela, not that she would at once redeem or secure her defaulted bonds in British, German, and Italian hands, but that she would take up the subject of her public debt and make "a fresh arrangement with a view to the satisfaction of the claims of the bondholders." It seems, however, that after a considerable interval the promised rearrangement had not been made.[25]

It has often happened that negotiations which have been com-

[23] Venezuelan Arbitrations of 1903, Ralston's Report, appendix, p. 1041; Penfield's Report, Hague Arbitration, p. 26.

[24] Penfield's Report, Hague Arbitration, p. 27; Ralston's Report, Venezuelan Arbitrations, appendix, p. 1042.

[25] Referring to the relations existing between Venezuela and foreign powers at the commencement of 1905 (two years *subsequent* to the triple blockade) Mr. Herbert W. Bowen, formerly United States minister to Venezuela, says, in an article in *The North American Review* of March 15, 1907, entitled "Castro and American Diplomacy:"

"Moreover, Germany and Great Britain began to show signs of restlessness because President Castro had not provided, as had been agreed in the protocols, for the payment of interest to British and German bondholders."

menced between two governments for the settlement of the claims of the citizens or subjects of the one against the other for injuries to person or property have been extended so as to include claims arising on contract. But so averse have governments been in practice to make default in payment of the national debt a matter of diplomatic intervention that even where the words " all claims " have been used in these arbitral conventions it has been held that, unless expressly mentioned, claims arising upon public bonds are not within the jurisdiction of the arbitral tribunal and should not be considered. It was so held by Sir Frederick Bruce as umpire of the United States and New Granadian Commission, organized under the claims convention of September 10, 1857,[26] and also by the United States commissioner (Wadsworth) and the Mexican commissioner (Zamacona) under the claims convention of July 4, 1868, between the United States and Mexico,[27] although in both cases claims founded on the public debt had been referred to the commission by our Secretary of State.

On that occasion Mr. Commissioner Wadsworth said:

Although the United States Government has assumed the responsibility of presenting here a claim for nonpayment of overdue coupons on a portion of the recognized bonds of the Republic of the Government of Mexico, and demands an award, nevertheless it appears to me that neither Government has with sufficient clearness agreed to refer such claims to this commission, and it is my decision that this case be dismissed without prejudice to the rights of the holders of the bonds and coupons.

In his concurring opinion, Mr. Zamacona expressed one of the objections commonly urged against diplomatic intervention on behalf of such claims, as follows:

The defense here maintains that claimants received bonds to the amount of $33,000. * * * Now, instead of $33,000 the claimants present $47,000 of bonds. It may very well be that they have obtained the difference as they say they did, but it may also very well be that they may have received this additional sum of bonds

[26] Moore's Arbs., Vol. IV, pp. 3612–3613.
[27] Moore's Arbs., Vol. IV, p. 3616.

from some holder who perhaps is not an American citizen. Accepting this as a diplomatic claim, when in the future claims have to be settled between Mexico and the United States, the whole of the debt of the former would be covered by the flag of the latter, whose citizens would appear as monopolizing Mexican bonds.[28]

The same view was taken by the mixed commission that sat at Caracas under the claims convention of April 25, 1866, and accordingly a claim for $558,150, of which about two-thirds was for interest, founded on bonds of the consolidable debt of Venezuela, was dismissed without prejudice; but, curiously enough, when, nearly a quarter of a century later, the awards of that commission were reopened on account of alleged fraud on the part of the arbitrators, the new commission, sitting at Washington in 1889–1890, rejected the authority of the preceding decisions and gave an award to the claimants for the face of the bonds, counting the peso at 75 cents gold coin of the United States, with 5 per cent. interest per annum from April 26, 1853, to September 2, 1890. Elaborate opinions were given by all three commissioners (Andrade dissenting), which are printed *in extenso* in Moore's International Arbitrations, Vol. IV, pages 3616–3664.

It is to be observed, however (and that is the point which I desire to bring clearly to your attention), that in none of these opinions is the *right* of diplomatic intervention by the government of the individual holders of foreign national bonds, on which default has been made, brought in question:

> The Government [said Sir Frederick Bruce] reserves to itself on special grounds the right to determine when and under what conditions such support shall be given, and this commission can not assume upon the strength of a general term, and in the absence of express language to that effect, that the Government of the United States intended to delegate to it powers which it has not exercised itself in a matter of so much delicacy.

Commissioners Little and Findlay of the United States and Venezuelan commission of 1889–1890 refer to Lord Palmerston's famous

[28] Moore's Arbs., Vol. IV, p. 3616. It was held, however, by the umpire of this commission that it had no jurisdiction of *any* claims arising *ex contractu*.

circular and to Hall's remarks upon it in his International Law, Mr. Findlay saying:

A claim is none the less a claim because it originated in contract instead of tort. The refusal to pay an honest claim is no less wrong because it happens to arise from an obligation to pay money instead of originating in violence offered to persons or property. Torts, as a rule, present more aggravated cases of injustice and affect the citizens at points which more loudly call for redress than ordinary breaches of contract, but after all the difference lies in degree only.[29]

Referring to Sir Frederick Bruce's observation that the policy of nonintervention had been pursued in such cases by the United States, Mr. Little said:

Very true, bonds are not of the character of claims ordinarily pressed by one government against another; but since the celebrated circular of Lord Palmerston in 1848, to British representatives at foreign courts, it would appear to be the established English doctrine at least that a state has *the right* authoritatively to interpose in behalf of its subjects or citizens in support and enforcement of claims founded on bonds against other states, if it chooses to do so. (Phillimore, Int. Law, Vol. II, 8; Hall, Int. Law, 237, 238.) And both the United States and Great Britain, as also other powers, have repeatedly, through treaties and other agencies, secured money due their citizens on contractual obligations from other states. And why not?

Hall, with much reason, says:

"Fundamentally, however, there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the state, *as itself the wrongdoer,* is immediately responsible."

The difference which is made in practice is in no sense obligatory, and *it is open to the governments to consider each case by itself and to act as seems well to them on the merits.*[30]

This is the received opinion, against which I do not believe that the so-called Drago Doctrine will prevail. Nevertheless, it is not improbable that a thorough discussion of the subject at The Hague

[29] United States and Venezuelan Claims Commission, Opinions, 335.

[30] *Ibid.*, 314.

would be of widespread benefit in making the advocates of the two opinions better acquainted with the views of each other.

Mr. Drago does not seem to me to deal with actual conditions. He speaks as if these defaults were altogether the misfortune and not at all the fault of the defaulting governments and peoples.[31]

The international right of intervention for the collection of contractual debts of governments, although it may rarely be exercised, can not be surrendered and must be held in reserve as a final sanction in the interest of civilization. Creditor governments can not stand idly by, indefinitely, and see members of the family of nations live what has been styled a life of public shame — appealing to arms instead of reason, to force instead of law, and making their territories scenes of ever-recurring violence and bloodshed and destruction and misery. These so-called "revolutions" are financed to a very considerable extent at the expense of the foreign creditors of the state. Sources of income that have been appropriated by treaty as security for the payment of public debts are seized and misappropriated by the so-called "revolutionists," and the prevailing

[31] After stating in his Instructions to the Delegates of the United States to the Third International Conference of American States, held at Rio de Janeiro last summer, that it has long been the established policy of the United States not to use its armed forces for the collection of ordinary contract debts due to its citizens by other governments, Mr. Root observed (under date of June 18, 1906):

"It is doubtless true that the nonpayment of public debts *may* be accompanied by such circumstances of fraud and wrong-doing or violation of treaties as to justify the use of force." (Report of the Delegates, Doc. No. 365, Sen., 59th Cong., 2d sess., p. 41.)

In his reply to Mr. Drago's note, without expressing concurrence or dissent, Mr. Hay observed:

"The President declared in his message to Congress, December 3, 1901, that by the Monroe Doctrine 'we do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.'

"In harmony with the foregoing language, the President announced in his message of December 2, 1902:

"No independent nation in America need have the slightest fear of aggression from the United States. *It behooves each one to maintain order within its own borders and to discharge its just obligations to foreigners.* When this is done they can rest assured that, be they strong or weak, they have nothing to dread from outside interference." (For. Rels., 1903, p. 5.)

lawlessness leads not only to outrages, sometimes of the most ferocious character, on innocent individuals, natives and foreigners, but also to the plunder or reckless expenditure of the public revenues and to that general insecurity of life and property in which progress and prosperity (no matter how bountiful nature may have been to the country) are impossible.[32]

Mr. Drago makes the following citation from Alexander Hamilton:

> Contracts between a nation and private individuals are obligatory according to the conscience of the sovereign, and may not be the object of compelling force. They confer no right of action contrary to the sovereign will.

But this does not seem to me to support Mr. Drago's contention that under no circumstances should the public debt of a state be forcibly collected by other states. Hamilton was simply stating the old rule that the sovereign could not be sued at law by the subject, or, in more modern form, that the state is not suable except to the extent and in the manner which it itself prescribes. He was not speaking of international rights and duties, but of the "right of action" as between subject and sovereign.

Vattel (as we have seen),[33] who wrote before Hamilton, ranks a contract between a government and a foreign individual with treaties between nations, and there is no question that treaties may be "the object of compelling force." In Hamilton's time the United States

[32] Referring to an episode in the financial history of San Domingo, Prof. J. B. Moore, as agent for the United States under the protocol of January 31, 1903, for the settlement of the claims of the San Domingo Improvement Company, against the Dominican Republic, by arbitration, observed:

"Evidently no one contemplated such a thing as *expulsion by force* from the security. Possibilities of earthquakes, tempests, floods, revolutions, were doubtless contemplated, as reflected in the rate per cent.; but no one dreamed of possible national seizure of the security; no one thought that after San Domingo had received the money, a government would come into existence that would seize and destroy the security on the faith of which it was given. Otherwise there would either have been no loan at all, or else careful provision would have been made to restrain the Government from the misuse of its physical force." (Argument of the United States before the Commission of Arbitration, p. 94.)

[33] *Supra*, p. 101.

could not be sued at law by the private citizen, but since 1855 it has been suable in the Court of Claims, and, since 1863, subject to final judgments, on contracts with its citizens, express or implied, or on any law of Congress or any regulation of an executive department, either party having the right of appeal to the Supreme Court in cases involving more than $3,000,[34] and under the Tucker Act of 1887, as recently construed by that court, the United States may also be sued in certain cases of a tortious character.[35]

It is no longer true in the United States (or, as a rule, in other civilized countries) that the nation's contracts are "obligatory according to the conscience of the sovereign." The obligation is now decided by the conscience of the court, applying the law of the land to the facts, and it would be revolutionary for Congress to refuse to pay such judgments.

The Argentine Government [says Mr. Drago in his famous note] has made its provinces indictable, and has even adopted the principle that the nation itself may be brought to trial before the Supreme Court on contracts which it enters into with individuals.[36]

The petition of right by which, in England, a claim is prosecuted by a subject against the Crown has endorsed on it, when entertained by the court: *"Soit droit fait al partie."*

Mr. Drago is not alone in the mistake of claiming Hamilton and Hamilton's country as supporting (in principle) "the Drago Doctrine;" for it is stated in the Report of the Delegates to the Third International Conference at Rio de Janeiro that:

It is well known that the principle advanced and so ably discussed by Dr. Drago has been for a great many years maintained by the United States, one of whose statesmen, Alexander Hamilton, early gave definite form to the principle, as did Lord Palmerston also when Prime Minister of England.[37]

[34] 10 Stats. at Large, 612; 12 Stats. at Large, 765; United States v. Klein, 13 Wall. 128, 144, 145.

[35] Dooley v. United States, 182 U. S. 224, 228; United States v. Lynah, 188 U. S. 465, 475, 476; Basso v. United States, 40 Ct. Claims, 202, 215, 216.

[36] For. Rels., 1903, p. 2.

[37] Report of the Delegates to the Third International Conference, held at Rio de Janeiro in 1906, p. 12.

We have already cited Mr. Hay's memorandum on Mr. Drago's note and Mr. Root's instructions to the delegates;[38] and, as for Lord Palmerston, he has always been regarded as the champion of the contrary "principle" that (whatever *policy* may be pursued) there is a reserved international right of forcible intervention for the collection of the public debt of a defaulting state. In his famous circular addressed in 1848 to British representatives at foreign courts, he said:

If the question is to be considered in its bearing on international right, there can be no doubt whatever of the *perfect right* which the government of every country possesses to take up, as a matter of diplomatic negotiation, any well-founded complaint which any of its subjects may prefer against the government of another country, or any wrong which from such foreign government those subjects may have sustained; and if the government of one country is entitled to demand redress for any one individual who may have a just but unsatisfied pecuniary claim upon the government of another country, the right so to require redress can not be diminished merely because the extent of the wrong is increased, and because instead of there being one individual claiming a comparatively small sum there are a great number of individuals to whom a very large amount is due.

After explaining that the British Government had pursued a policy of nonintervention in such cases in the hope that the losses of imprudent men would prove a salutary warning to others and prevent foreign loans from being raised in Great Britain except by governments of known good faith and ascertained solvency, his Lordship concluded as follows:

But nevertheless it might happen that the loss occasioned to British subjects might become so great that it would be too high a price for the nation to pay for such a warning as to the future, and in such a state of things it might become the duty of the British Government to make these matters the subject of diplomatic negotiation.

To this Mr. Hall adds, in a note containing the foregoing citation:

A short time previously Lord Palmerston, in answer to a question in the House of Commons, indicated that under certain circum-

[38] *Supra*, p. 117, note 31.

stance he might be prepared to go to the length of using force. The doctrine and the principles of policy laid down in Lord Palmerston's circular have been lately reaffirmed by Lord Salisbury. See the *Times* of January 7, 1880.[39]

Assuming that there is an analogy between the relations of states in the family of nations and the relations of individuals in the state, it is very significant that as between individuals in every civilized country the simplest legal obligation has the whole force of government behind it. If I borrow money and do not repay it when due, my creditor can sue me wherever he can find me; he can seize and sell my property in execution of his judgment. If I have made conveyances in fraud of my creditors, they can have these fraudulent transactions exposed and set aside, and compel me to pay to the uttermost extent of my ability. If as mortgagor I am sold out of house and home in foreclosure and refuse to quit the premises, a writ of ejectment will issue against me, and if I commit a breach of the peace by resisting I may be put in jail.

There can be no permanent peace without justice, and, with the world as it is, the *right* to enforce pecuniary obligations between nations — as between individuals — must be reserved in the interest of civilization. This sanction should not be invoked between nations (or men) inconsiderately, or ever, perhaps, except as a last resort, and when the amount or the equity of the obligation is in doubt, and impartial arbitration is proposed by the debtor government, it should be accepted by the creditor.[39a] But between nations, as between indi-

[39] Hall's Inter. Law, 1st ed., Part II, Chap. VII, § 87, pp. 237, 238.

In 1847 a motion was made in the House of Commons the object of which was to induce the Government to give redress to the British holders of unpaid Spanish bonds by issuing reprisals against Spain. The Secretary for Foreign Relations (Lord Palmerston) resisted the motion solely on the ground of *expediency* and *public policy*, but admitted that it was justified by the principles of international law, and gave no vague intimation that if the British holders continued to receive no redress from Spain the time would come when it would be *politic* as well as *just* to compel by measures of force the payment of this debt. (III Phil. Inter. Law, 2d ed., 37.)

[39a] This may now be said to be substantially the international law on the subject, in view of the convention adopted at The Hague to the effect that contractual debts shall not be collected by force unless impartial arbitration, proffered by

viduals, the sanction of force will only become unnecessary when what Vattel calls the innate and necessary law has entire possession and control of the souls of men and the state can therefore do no wrong.

But this belongs to the time of which poets have dreamed and seers foretold — when "mercy and truth are met together and righteousness and peace have kissed each other;" [40] when men "shall beat their swords into ploughshares and their spears into pruning hooks; when nation shall not lift up sword against nation nor learn war any more." [41]

Meanwhile, this international right of which we have been speaking must be reserved, to be exercised hereafter (let us hope) in better ways than war; in such a concert of nations for the ascertainment and administration of international justice as would make resistance futile, as, indeed, it would have been in the tripartite blockade; or, better yet, as in the cases of Great Britain in Egypt and the United States in Santo Domingo,[42] by helping the debtor states so to use their resources and preserve the peace as to enable them to regain their credit and to pay off their debts and thus to give them a fair start on the road that leads to national development and individual well-being.

The CHAIRMAN. The question we are discussing is, "Is the forcible collection of contract debts in the interest of international justice and peace?"

the claimant government, is either declined, or unreasonably delayed, or the awards of the arbitrators are left unsatisfied, by the debtor government.

The discussion of the so-called "Drago Doctrine" has resulted in an international agreement which insures the collection of "contract debts" either by an impartial international adjudication, or, in default of such proceedings, by whatever other means may be available.

If the Hague convention, 1907, on this subject is put in practice, every just claim of an individual against a foreign government will hereafter be much more readily and surely collectible than ever before.

[40] Psal. LXIII:10.

[41] Isa. II:4.

[42] See Professor J. B. Hollander's article on the convention of 1907 between the United States and the Dominican Republic in the second number of THE AMERICAN JOURNAL OF INTERNATIONAL LAW and the text of the convention in the Supplement to the same issue.

I am not going to abuse my privilege as the presiding officer to discuss my brother Kennedy's paper, but I want to ask him this question, simply to bring out his view of the question. Some of those German claims, I understand, arose from contracts that were made by German subjects with the Venezuelan Government for the construction of railroads, and it was alleged that those contracts had not been complied with by the contractors and the Government annulled the contract, or forfeited their right. Now, the question: Would it be justifiable in Germany to enforce that kind of a claim by military force?

Mr. KENNEDY. My answer to that is, Mr. President —

The CHAIRMAN. I apprehend that that is the question we are to discuss, Mr. Kennedy, is it not?

Mr. KENNEDY. I think so — in connection with impartial arbitration.

The CHAIRMAN. You did not quite make that clear to me, as to what your idea was. My question is not with a view to antagonizing your paper at all. I have listened to it with great interest and profit, but I wanted to bring out your view of that particular point.

Mr. KENNEDY. The blockade by the three Powers has been used as illustrating the injustice and the evils of enforcing the payment of "contract debts" by an appeal to arms. I simply wanted to show that historically the action of the three blockading Powers was not taken for any such purpose. Germany, Great Britain, and Italy took the course they did against Venezuela not because, as Mr. Drago seems to have thought, there had been a default in the payment of the principal or interest of her bonds, but because Venezuela refused to furnish an impartial tribunal in which those other international claims could be fairly considered. That was the point, Mr. President, that I wanted to make in my paper.

The CHAIRMAN. That is, that Mr. Drago made protest against something that did not exist in fact?

Mr. KENNEDY. That he was misinformed as to the grounds on which the three blockading Powers took the action which they did; and this misapprehension has covered up from public view the

wrongs that are undoubtedly inflicted on resident foreigners in those constant appeals to violence in these revolutionary countries.

The CHAIRMAN. You have made that very clear, but you have not yet answered my question, have you?

Mr. KENNEDY. Suppose you put it again?

The CHAIRMAN. It is whether if the German subject had contracted to construct a railroad, and the Venezuelan Government says: "You have not complied with your contract; I forfeit it" — this man having voluntarily gone into Venezuela — would the German Government be justified in using force to collect damages?

Mr. KENNEDY. Germany offered, as I tried to show in my paper, arbitration of all her claims against Venezuela, not only the kind you mention, but others about which there was no doubt, and in which German subjects had been despoiled and some of them physically injured in the most cruel and inhuman way. I have simply been trying this afternoon to clear away the cloud of misconception that has hung over this very important episode in modern history, and to show the real grounds on which the blockading Powers took the action that they did.

The CHAIRMAN. I think you have made that very clear.

The next paper on the same subject is by Prof. Amos S. Hershey, of the University of Indiana.

ADDRESS OF PROF. AMOS S. HERSHEY, OF THE UNIVERSITY OF INDIANA, BLOOMINGTON, IND.

Mr. Chairman and Gentlemen: When I agreed to speak on this question, I am afraid I did not take into sufficient account the limitations of the subject, or possibly my own limitations. I have already expressed my views on this question in an article which has been published in the JOURNAL [1] and I find that I can do very little except to reiterate and perhaps summarize what I have already said in that paper.

Now, I shall discuss this question on the broader grounds which

[1] Vol. I, p. 26.

Mr. Kennedy's argument suggests; but I think we ought to distinguish between a mere claim for indemnity, diplomatic intervention or interposition on the one hand, and armed or forcible intervention on the other.

If this question covered a wider range and were stated so as to read: "Is the forcible collection of any private claims of a pecuniary nature in the interest of international justice and peace?" I should still unhesitatingly and emphatically answer in the negative.

The attempt at the forcible collection of pecuniary claims or the mere threat to use force for the collection of such claims is essentially an act of intervention which may well result in war. Like war, intervention (I am not here speaking of a mere claim for indemnity or diplomatic interposition) is a *moral* or *political* rather than a *legal* right, and is only to be justified in the most extreme and exceptional cases. It should only be employed when interests and principles of the most vital and far-reaching importance are at stake, and then only after every other remedy has been exhausted.

The subject of intervention is one of great apparent difficulty and complexity. This arises from the fact that nowhere else within the wide range of international relations does there exist such a wide divergence between political theory or fundamental principles on the one hand and what seems to be the actual practice of nations on the other. The whole modern or Grotian system of international law rests upon the doctrine of the absolute legal equality and complete independence of sovereign states. This presupposes full liberty of action on the part of each sovereign within his own jurisdiction and noninterference in the external or internal affairs of other sovereigns. The rule or doctrine of nonintervention is therefore a necessary corollary of the doctrine or principle of the complete equality and independence of sovereign states and is a fundamental principle of international law.

But international law is supposed to rest upon international practice as well as upon fundamental principles, and when we examine the actual practice of sovereign states, and especially that of the great powers during the nineteenth century, we find numerous examples of armed intervention on all sorts of grounds and pretexts.

(1) Intervention on *grounds of humanity or morality, e. g.,* to put an end to great crimes and slaughter or to various forms of cruelty and oppression; to prevent the extermination of a race or a needless diffusion of blood, as in Greece, Cuba, and Bulgaria.

(2) Intervention on *grounds of policy and self-interest, e. g.,* to secure the balance of power or to maintain the *status quo* or political equilibrium in Europe or the primacy of the United States in America; to enforce personal and property rights of citizens or subjects of the intervening state (the forcible collection of contract debts would come under this head); to prevent the spread of political heresy or revolution (as, *e. g.,* the intervention of members of the Holy Alliance after the downfall of Napoleon); and to advance the collective interests of civilization (as in the case of Panama).

(3) Then there are the interventions on so-called *legal grounds,* for the sake of self-preservation; to prevent or terminate the unjustifiable or illegal intervention of another state (as in the case of the United States against France in Mexico); to enforce treaties of guaranty or fundamental principles of international law. These are only some of the many grounds or pretexts which have been advocated as sufficient causes for armed intervention in modern times.

I have recently had occasion to examine and compare a considerable number of the authorities on this interesting and important subject, and have found that they differ widely in their opinions as to what constitute legal or justifiable grounds for intervention or whether, indeed, there exists any such legal right whatever. The only approach to unanimity is in respect to the right of self-preservation, which is, properly speaking, not a law or legal right in the ordinary sense of that term as applied to positive rules and regulations, but is a fundamental right or principle which underlies and takes precedence of all systems of positive law and custom and from whose operation neither nations nor individuals could escape if they would.

The view of the majority of these publicists (and this is particularly true of the more recent ones) seems to be that nonintervention is the correct, every-day rule or principle of international action, but that intervention is either legally, morally, or perhaps politically

justifiable in extreme and exceptional cases, as, *e. g.*, in case of great crimes against humanity or where vital national or international interests of far-reaching importance are at stake.

The question here presents itself, Is the collection of contract debts or, indeed, of any private pecuniary claims sufficiently important to international interests or to those of the creditor nation to justify the use or threat of force? Does the collection of such claims justify the exercise of such a high — we might say extreme — political power as is involved in an act of war or an intervention which amounts to a threat of war and may lead to war? Does not the mere statement of the question in this form carry with it a sufficient refutation?

Is there any principle involving national honor or self-preservation, or even of self-development, here at stake? Is it not rather true that a nation sensitive of its honor would scorn such means of collecting even an honest debt, especially from a poorer and weaker state? During her great struggle with Russia — a struggle of life and death — Japan was ready to forego the prospect of a large indemnity rather than give the appearance of continuing to wage war for money. How much less should a rich and powerful state be willing to threaten or precipitate a war for money!

If we take the trouble to examine the character of such claims as have been settled by mixed commissions, we shall find that they are for the most part exorbitant in amount and far in excess of liability. I shall not take up your valuable time with statistics on this subject, but shall merely refer you to Professor Moore's great work on Arbitration, where you will find numerous examples in proof of this assertion. The percentage of amounts actually awarded in proportion to those claimed is as low as three-seventeenths of 1 per cent. and is often less than 2 per cent.

Besides being excessive in amount, it is generally believed that many of these claims are fraudulent and tainted with illegality and injustice. It is notorious that the sums received by a government are often far below the face value of the loan, and that many of the claimants for losses during civil war and insurrection are not above suspicion of having themselves been engaged in unneutral or insurrectionary acts.

In view of the ill-founded character of most of these claims and of the danger to the peace and safety of the states of Latin America which would result from their forcible collection by leading European powers, I, for one, believe that the United States would be fully justified even in advancing a step beyond the narrower Drago Doctrine (which merely forbids the forcible collection of public debts) and planting itself squarely upon the broader Calvo Doctrine in so far as that doctrine condemns the use of force for the collection of all private claims of a pecuniary nature.

Should the occasion arise or a good opportunity present itself, I believe that the United States Government should formally declare to the world that it could not see with indifference any attempt at the forcible collection of private claims of a pecuniary nature on the Western Continent.

The Monroe Doctrine, at least in its present form, forbids the further acquisition, colonization, or permanent occupation of American territory by any European power, and such a declaration would not only be in harmony with the spirit of that doctrine, but it would tend to strengthen the principle of nonintervention.

In view, however, of the fact that some of these claims may possibly be well founded and that the governments and judicial tribunals in certain Latin American states are notoriously corrupt or unstable, this declaration should, in my opinion, be coupled with another insisting that all such claims be submitted to fair and impartial arbitral tribunals or mixed commissions composed of representatives from both the creditor and debtor nations.

The United States has no desire to become a "debt-collecting agency" for European creditors or to establish a protectorate over the states of Latin America. For these reasons our Government should avoid, if possible, the responsibility of making *ex parte* decisions regarding the validity of these claims, although I am inclined to think that the assumption of this burden would be preferable to their forcible collection by European powers and the results which might follow such a use of force. It seems to me that our insistence upon arbitration in the case of the famous boundary dispute between Great Britain and Venezuela in 1895 points the way toward what

is at once the easiest and most equitable mode of settling such disputes.

The CHAIRMAN. We will now hear a paper by William L. Penfield, esq., well known to us as the late Solicitor of the Department of State.

ADDRESS OF WILLIAM L. PENFIELD, ESQ.,
OF WASHINGTON, D. C.

Mr. Chairman and Gentlemen: The question whether the forcible collection by a state of the contract debts of another state is in the interest of international justice and peace requires definition and amplification before it can be satisfactorily answered. The answer to the question, as stated in general terms, involves considerations of international law, policy, and ethics. If by contract debts only those are included which are held by the citizens of one state against the government of another, in the form of bonds and other public securities voluntarily purchased, the question stated could only be answered in the negative. It is true, as contended by Mr. Drago in his celebrated note to Mr. Hay, that the capitalist who lends his money to a foreign state always takes into account the greater or less probability of payment. In purchasing the obligations of a government the investor buys with full notice and assumption of all risks — of the character of the government, of its financial condition, and of its ordinary right as a sovereign state to adapt its fiscal policy to the necessities of the state. This necessarily carries with it the right to postpone the payment of its debts to a better day in order to maintain its civil list and its own existence. Whether its fiscal policy is wise or not is a question with which no other government may ordinarily and properly interfere; and least of all can the investor, with eyes wide open, voluntarily assume these risks and expect his own government to make his venture good. Otherwise the government would become in effect the underwriter and guarantor of all the securities which its citizens might purchase against foreign governments. It is this class of contract debts of "the capitalist who lends his money to a foreign state" that Mr. Drago mentioned

in his disapproval of "the collection by military means of loans made by the citizens of one state to the government of another." The forced payment of these obligations at par value and in the interest of speculators on the misery and distress of a weak and perhaps disordered state is not defensible in point of international law and ethics, and would not be consistent with a wise, just, and humane international policy.

The question which formed the subject of Mr. Drago's note has been given a much wider scope by the statement of the question for the present discussion; and much harm has been done by public denunciations of intervention for the collection of claims growing out of the spoliation of the property of the foreigner by the supreme authority of the state. All jurists and statesmen unite in the opinion that the supreme concern of every government, whether in its domestic or international relations, is the administration of justice. Behind the law is the latent power of the state to enforce justice; and the general acceptance of the opinion that this force must never be invoked by a government in order to secure justice to its citizens abroad could, if carried to its logical conclusion, lead only to utter injustice and social chaos at home. But the party who purchases the obligations of a foreign government stands in a different light from the one who has taken a concession from a foreign government, on the faith of which he has invested his capital and used it in improving the navigation or developing the resources of the country; and where finally the government has, with evident bad faith, repudiated the contract and deprived him of the legitimate fruits of his enterprise. In form the wrong may consist in a simple breach of contract by the government, while by preventing him from enjoying the fruits of his industry it amounts in effect to the confiscation of his entire investment. Mr. Drago's note was significantly silent on this subject, and its silence is suggestive of the views actually entertained by this enlightened statesman.

A contract made by a private party with a foreign government for the improvement of its harbors or the development of its mineral, agricultural, or other natural resources, which has been followed by

the large investment of capital in the enterprise, rests on a very different footing from the obligations of a government purchased in the open market with full notice and assumption of all risks. Where a government enters into a contract with a foreigner, on the faith of which he invests his capital, and then proceeds arbitrarily and flagrantly to break or repudiate the contract and appropriate or destroy the fruits of the industry created by the capital invested under the contract, it constitutes not merely the breach of a contract, but also a denial of the protection of the local laws. It is in effect a decree of outlawry, attended by the forfeiture of property.

In cases of this kind, the question under discussion raises no doubtful question of justice. The injustice is admitted; and the principle on which governments have in the past been accustomed to act was thus stated in a report of the Senate Committee on Foreign Relations in 1818:

It is due to the dignity of the United States to adopt, as a fundamental rule of its policies, the principle that one of its citizens, to whatever region of the earth his lawful business may carry him, and who demeans himself as becomes his character, is entitled to the protection of his Government; and that whatever international injury may be done him should be retaliated by the employment, if necessary, of the whole force of the nation.

But with the progress of more humane and liberal ideas during the nineteenth century, the United States have been wisely substituting the appeal to arbitration in place of the appeal to force. This policy seemed to promise a solution of the question of the maintenance of peace by means of arbitral justice; but no sooner was this apparent solution reached than a new way has been found to defeat justice when administered even in this impartial form. For among those who cry out the loudest against the use of forcible intervention for the collection of debts are some who refuse to submit to impartial arbitration controversies growing out of the most flagrant spoliations of private property. The outcry raised against forcible intervention in these cases has been in the past associated with strange espousals of the Monroe Doctrine; and the Drago Doctrine

has now been made use of as a convenient substitute for the threadbare Monroe Doctrine, which has ceased to serve the purposes of those who would pervert and use it as a shield for wrongdoing. Neither the Monroe nor the Drago Doctrine affords any sanction for the spoliation of rights of property which have been vested under contracts partially or completely performed. The outcry against the use of force is made the pretext of refusals to do justice or to submit to the justice of impartial arbitration; and the final question for solution now is whether if governments refuse to submit their controversies with each other to arbitration force is not warranted in order to compel the submission. Neither government then becomes judge in its own cause, and the question whether force should not then be invoked depends on the value which mankind sets on justice and on the value set on peace, when justice and peace are brought into open conflict.

Mr. Chairman, whether it is possible to bring all nations to submit all their controversies of a political nature to arbitration may be a question; but that it is practicable to settle all controversies of a judicial nature by this method is no longer to be doubted. It is precisely the weaker states who have suffered most from forcible interventions who above all others are most deeply interested in inducing all nations to accept arbitration by themselves setting the example of invoking it. The propaganda of peace is brought in measurable discredit by some who proclaim the immorality of the use of force in these cases and who yet manifest a silent but determined opposition to the acceptance of genuine impartial arbitration. The fundamental principles of morality which govern the relations of individuals govern the relations of nations. The only condition of peace within the state — the only reason and object of its existence — is justice; and there can be no lasting peace between nations on any other basis than that of judicial or arbitral justice. So long as individuals or nations disown justice, the use of force is necessary and inevitable in order to compel the acceptance of impartial arbitration in the interests of justice and peace. I would therefore amend the question stated for discussion, and, as amended, answer in the affirmative, that the interests of international justice and

peace can only be assured by the use of force when necessary in order to compel the acceptance of impartial arbitration.

And so, Mr. Chairman, permit me to venture an answer to your question to Mr. Kennedy. The annulment of the concession owned by the Germans for the construction of the railroad, and on which they had expended a large sum of money, left that railroad the property of the Venezuelan Government. It was confiscation, although in the form of breach of contract. Why should not Germany have protected her subjects?

The CHAIRMAN. We will now hear a paper by Prof. John Holliday Latané, professor of history and international law in Washington and Lee University, Virginia.

ADDRESS OF PROF. JOHN HOLLIDAY LATANÉ, OF WASHINGTON AND LEE UNIVERSITY, VIRGINIA.

Mr. President, and Members of the American Society of International Law: There are three or four points which I shall ask you to consider in the discussion of this perplexing question. It is a perplexing question, the most perplexing, perhaps, that has arisen in American diplomacy for several years. While the use of force for the collection of debts is nothing new in international relations, measures of coercion have until recently rarely been employed where contract debts alone were involved, though such debts have often been lumped with other claims of a different character and their payment demanded. But of late years coercion has been systematically resorted to where contract debts constituted the main claim, and the action has been of such a character as to constitute a precedent. Under such circumstances, where American republics were the debtors, the United States, which has always refused to take up such claims on behalf of its own citizens, has been compelled to define its attitude toward the action of other states in behalf of their citizens or subjects.

The United States has always refrained on principle from taking

up claims of this kind. As Mr. Bayard expressed it, in a dispatch of June 24, 1885:

1. All that our Government undertakes, when the claim is merely contractual, is to interpose its good offices — in other words, to ask the attention of the foreign sovereign to the claim — and this is only done when the claim is one susceptible of strong and clear proof.

2. If the sovereign appealed to denies the validity of the claim or refuses its payment, the matter drops, since it is not consistent with the dignity of the United States to press, after such a refusal or denial, a contractual claim for the repudiation of which there is by the law of nations no redress.

Great Britain has in the past pursued practically the same course, though as a matter of policy, apparently, rather than of principle. In a circular dispatch of Lord Palmerston, issued in January, 1848, which has been much quoted, he held that every state had the perfect right to take up, as a matter of diplomatic negotiation, any well-founded complaint which any of its subjects might prefer against the government of another country; that the Government of Great Britain had always considered it undesirable that British subjects should invest their capital in loans to foreign governments, instead of employing it in profitable undertakings at home; and that with a view to discouraging hazardous loans to foreign governments, the British Government had hitherto thought it best to abstain from taking up as international questions complaints made by British subjects against foreign states. These principles of policy, as laid down by Lord Palmerston, were reaffirmed by Lord Salisbury in 1880.

During the discussions on the Venezuelan situation that took place in Parliament in December, 1902, the members of the Government repeatedly repudiated the charge of the opposition that they were engaged in a debt-collecting expedition, and tried to make it appear that they were protecting the lives and liberties of British subjects. Lord Cranborne declared:

I can frankly tell the House that it is not the claims of the bondholders that bulk largest in the estimation of the Government. I do not believe the Government would ever have taken the strong

measures to which they have been driven if it had not been for the attacks by Venezuela upon the lives, the liberty, and the property of British subjects.

During the same discussion Mr. Norman said:

This idea of the British fleet being employed to collect the debts of foreign bondholders is assuredly a mistaken one. It was said by Wellington once that the British army did not exist for the purpose of collecting certain debts. It is still more true of the British fleet that it does not exist for the purpose of collecting debts of bondholders. People who lend money to South American republics know what the security is and what they are likely to get in return, and they ought not to have the British fleet at their backs.

To this Mr. Balfour, the Prime Minister, replied:

I do not deny — in fact, I freely admit — that bondholders may occupy an international position which may require international action; but I look upon such international action with the gravest doubt and suspicion, and I doubt whether we have in the past ever gone to war for the bondholders, for those of our countrymen who have lent money to a foreign government; and I confess that I should be very sorry to see that made a practice in this country.

In spite of disclaimers like the above, when we take into consideration the real character of the claims in question, we are forced to conclude that the action of Germany, England, and Italy against Venezuela in 1902 constituted an innovation in the practice of nations. That the allied powers were conscious of this fact seems apparent from their manifest endeavor to disguise the real character of the claims they were trying to collect. It is perfectly apparent to those who have followed closely the controversy that the foreign debt was the real question at issue and that intervention was undertaken in the interest of bondholders.

This is an age of world commerce and of financial transactions of world-wide scope; capital is no longer satisfied with the interest earned at home, but ever seeks new fields of investment in foreign lands. In South America, in South Africa, in Egypt, and in China we see the foreign construction of works of internal improvement and the foreign exploitation of internal resources. Commercial

interest in many cases involves sooner or later political intervention. England's interest in the Suez Canal gives her a moral right in Egypt which the powers of Europe can not gainsay. Temporary intervention in 1881 for the protection of her interests has assumed a character of permanent occupation. Russia's commercial exploitation of Manchuria led to a military occupation which was terminated only by the bloodiest war of modern times. The states of Europe are encouraging their subjects to build up commercial and business interests in all parts of the world, and they can not refuse to protect these interests. The forcible collection of contract debts is, therefore, but an incident in the rivalry of nations for a world-wide extension of commerce.

The adoption of measures of coercion should be prohibited or regulated in such a way as to safeguard the interests and rights of third parties. As recently employed coercion of this kind raises several questions of a very perplexing character. The first consideration is one of equity between the repudiating and the coercing state. Intervention, such as that of England and Germany in Venezuela, coming in the midst of civil insurrection, endangers the very existence of the state, and the right to a continued existence is the most sacred of all sovereign rights. It is not always possible for a state to pay its debts, and of that fact the state itself is the sole judge. If foreign states are to be the judges whether a state is able to pay its debts or not, the very existence of that state is at the mercy of its creditors. The most that a foreigner has the right to expect is that his claim shall receive the same consideration as those of subjects. Not only do we forget this fact, but in most discussions of this question we ignore the fundamental fact that the great majority of claims that are pressed through diplomatic channels are unjust or exaggerated. During the summer of 1903 ten mixed commissions sat at Caracas to adjudicate upon the claims of as many states against Venezuela. The awards of these commissions are very instructive, as they show the injustice of resorting to measures of coercion for the collection of pecuniary claims which have not been submitted to arbitration. The following table shows the amounts claimed and the amounts awarded in each case, in terms of *bolivars:*

	Claims.	Awards.
Great Britain	14,743,572	9,401,267
Germany	7,367,685	2,091,908
France	17,888,512	2,667,079
Spain	5,307,626	1,974,818
Belgium	14,921,805	10,898,643
Sweden and Norway	1,047,701	174,359
The Netherlands	5,242,519	544,301
The United States	81,410,952	2,313,711
Mexico	2,897,415	2,577,328
Italy	39,844,258	5,785,962

These figures speak for themselves.

The second consideration in intervention of this kind involves the claims of third parties. Intervening states are not usually the only ones holding claims against the debtor state, yet when a settlement is forced the coercing states demand preferential treatment. [In 1902 a committee of foreign bondholders of Guatemala in London invited the United States to join England, France, Germany, and other European powers in securing an adjustment. The United States replied that, " while the Government of the United States is indisposed to join in any collective act which might bear the aspect of coercive pressure upon Guatemala, this Government would reserve for its citizens equal benefits with those which might be obtained for creditors of any other nationality in the adjustment of the Guatemalan foreign debt, and the United States minister to Guatemala will be instructed to advise the Guatemalan Government of this attitude on the part of the United States." It appears that the representatives of England, France, Germany, and Belgium notified the Guatemalan Government that if arrangements were not made to satisfy their respective creditors on a specific date a man-of-war would take possession of each of the principal ports of that Republic. To this ultimatum Guatemala yielded and promptly paid a large part of the foreign claims. It is needless to say that the claims of the United States, which had shown such friendly consideration, were not among those settled upon this occasion, and the United States felt called upon to remonstrate against this dis-

crimination.] The question of preferential treatment came before the Hague Court later in the celebrated Venezuelan Case, and was decided in favor of the powers who had resorted to coercive measures. The court held that they were entitled to preferential treatment because Venezuela had recognized in principle the justice of their claims while she had not recognized in principle the justice of the claims of the nonblockading powers; as for the latter they had profited to some extent by the operations of the allies, and their claims remained for the future absolutely intact. Whatever we may think of the justice of this decision, it is evident that for the future the United States will be at a distinct disadvantage if it continues to adhere to its policy of not coercing an American state, while permitting European powers to do so.

A third and still more difficult problem is how far measures of coercion should be allowed to interfere with the trade of third parties. This consideration raises the question as to the means to be employed in the act of coercion. The most effective measure falling short of war is "pacific blockade," but the United States does not recognize such a blockade as binding upon third parties. When the powers of Europe blockaded the island of Crete in 1897, the United States declined to concede the right to establish such a blockade and reserved the consideration of all questions in any way affecting the commerce or interest of the United States. This position was in accordance with the views of the Institute of International Law, which, in 1897, endorsed the practice of pacific blockade under the following conditions: (1) Ships under foreign flags may enter freely, notwithstanding the blockade; (2) the pacific blockade must be declared and notified officially and be maintained by a sufficient force; and (3) ships of the blockaded power may be sequestrated, but at the termination of the blockade must be restored, with cargo, to the owners, who are to have no claim for compensation. Such a blockade would, of course, be ineffective for the collection of debts, for the blockaded power could simply transfer its commerce temporarily to foreign flags. In the Venezuelan affair of 1902 the United States refused to recognize either a "pacific" or a "warlike" blockade, and the allied powers were compelled to resort to a regular

blockade creating a status of belligerency. Such extreme measures, however, are usually undesirable; for the status of belligerency seriously interferes with the commerce of belligerents, as well as with that of neutrals.

The only other effective measure of coercion seems to be the seizure of custom-houses and the collection of dues; but such a step frequently leads to the permanent occupation of territory, which in the case of American states is in direct conflict with the Monroe Doctrine. President Roosevelt's solution of this question was stated in his message of December 6, 1904:

Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and, in the Western Hemisphere, the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power.

The last clause of this message contains the principle upon which the President's Santo Domingan policy was based. We have here a bankrupt Republic, hard pressed by its European creditors, appealing to the United States for relief. In the protocol concluded between Santo Domingo and the United States, February 4, 1905, it was provided that the United States Government should guarantee the territorial integrity of the Dominican Republic, take charge of its custom-houses, administer its finances, and settle its obligations, foreign as well as domestic. In short, the Dominican Republic was to be treated as a bankrupt corporation and the United States was to act as receiver. The Senate failed to act on this treaty at the time, but under a *modus vivendi* substantially the same program was carried out for two years, and on the 25th of last February the Senate finally sanctioned the arrangement. It is to be devoutly hoped that the case of Santo Domingo stands wholly by itself and that there were

circumstances of a peculiar nature unknown to the public which made such action necessary. If it were to be made a precedent the United States navy would become a mere debt-collecting agency for the creditor nations of Europe, for the bankers of Europe would find it profitable to buy up all doubtful claims, of whatever character, against American states and urge their governments to press for payment. The only escape from such a predicament would be the establishment of a protectorate over all the weaker Latin-American states and the enforced adoption by them of a provision like the "Platt Amendment," by which Cuba has bound herself not to contract any foreign obligations the payment of which can not be provided for by the ordinary revenues of the island.

The determination of pecuniary claims is essentially a judicial function, and as a matter of simple justice no state should press for the payment of any specific amount on a mere *ex parte* statement. Arbitration is the only satisfactory and consequently the only permanent solution of the question. Should a general arbitration treaty be adopted by the next Hague Conference it is to be earnestly hoped that it will cover the subject of contract debts, but an agreement on this subject seems unlikely at this time. The only other solution that commends itself to my mind would be for the American states which failed to ratify the pecuniary claims convention adopted by the International American Conference of 1901 to announce their adherence to the principle of arbitration, and for the United States to refuse to countenance any measures of coercion against an American state which is willing to arbitrate. If, as President Roosevelt contends, the only effective measures of coercion are a menace to the Monroe Doctrine, why not demand arbitration as President Cleveland did in the Venezuelan boundary dispute? Such a solution seems the only feasible one, and there is no reason to doubt that it would be satisfactory and just, for experience has shown that a state rarely refuses to pay a claim which has been adjudicated.

The CHAIRMAN. I think I voice the sentiment of the Society when I say that we are under special obligation to these four gentlemen for the careful way in which they have evidently prepared their papers. We will all be instructed by having heard them.

The subject is now open for general discussion under the limitation of the five-minute rule, and the Secretary will hold his watch and tell me when to stop you; and I will be certain to do so, when given notice.

Mr. WILLIAM BARNES. Mr. Chairman, I offer this resolution, which I hope the Secretary will read.

The CHAIRMAN. The Secretary will read the resolution.

The Secretary read the resolution offered by Mr. William Barnes, of Nantucket Island, Mass., as follows:

Resolved, That the American Society of International Law assembled at Washington City, April 19, 1907, considers that it is a degradation of the functions and purposes of the navies of the world to pervert them to the duties of debt collectors for any country or its citizens, and the lowering of the dignity of admirals of the navy to force them to perform the functions of bailiffs, constables, and sheriffs in the collection of debts, and that we hereby approve of a so-called "Calvo" or "Drago" doctrine as explained by Mr. Amos S. Hershey in the AMERICAN JOURNAL OF INTERNATIONAL LAW, January, 1907, Vol. I, pages 26–45; and that we hereby recommend to the second peace and arbitration congress to meet at The Hague June 15, 1907, the adoption of the same or some suitable modification thereof.

REMARKS OF MR. WILLIAM BARNES, OF NANTUCKET, MASS.

Mr. President and Gentlemen of the Society: We have in the Venezuela case, cited by the learned gentlemen who have read their very elaborate papers on this subject, an example of the carrying out of the doctrine of enforcing private claims by the force of the nations.

Where would Venezuela be to-day if it had not been for the intervention or the *quasi*-intervention of the powers of the United States? She would be divided, probably, into three parcels.

Now, another example. Take the case of Mexico, before the time of Maximilian, when Spain and England and France united to enforce their claims — France, particularly, a claim on which a very small percentage of the bonds was being advanced. Suppose Spain and

Great Britain had not deserted France — where would Mexico be to-day? If France had been supported by Spain and Great Britain, it would be subject to those Powers to-day.

It seems to me an exceedingly simple question. The idea of an enormous and powerful nation presenting a little bill against a nation, or against citizens, and sending an enormous navy to enforce that claim! It does not seem tolerable, on principle.

Take the case here. A New York merchant gives credit to a man in Texas for goods — say a railroad contractor — and he goes on and builds a railroad. If that debt is not paid, or if the railroad abolishes the contract on the ground of nonfulfillment, or they abolish the charter in Texas, does New York send down troops to Texas to enforce the claim of that New York merchant?

Take it right over at Chihuahua, or Coahuila, over the line in Mexico. According to the doctrines advanced here, the New York merchant or the merchant who has a claim against the Government of the State of Mexico is entitled to have the whole army and navy go down there.

We, here in the United States, have to rely upon the courts of the different States for the enforcement of claims against the State or individual. This should be applicable to nations.

Nobody is obliged to go to Venezuela to build a railroad. If they go there they should take the whole risk of the Venezuelan Government, and if they can not trust them they should keep away. They say, "We can not trust some of the courts of the Latin American republics." Then keep away.

If you go there, for these enormous profits that you are to make by going there, you must be bound by the laws of equity and humanity, and you must do the same as the citizens of that State do, appeal only to the courts of that nation for your protection, and not ask the enormous navies that we have now, that cost at the rate of $10,000,000 a ship, to go there and collect a five-hundred-dollar claim or a five-hundred-dollar bond against any of these governments.

Mr. Robert Lansing. Mr. Chairman, as this is not a business session, I would move that the resolution be referred to the Executive Committee.

Mr. BARNES. I second the motion.

The CHAIRMAN. I think by the rule of the Society it goes to the Executive Committee, and it will take that course, which is in accordance with the view of the mover.

REMARKS OF MR. GURGEL DO AMARAL, OF WASHINGTON, D. C.

Mr. President; Gentlemen of the Society: I am the counselor of the Brazilian embassy to this country, but I wish to make it clear that the few remarks I will introduce now have no connection whatever with my official capacity. As a Brazilian citizen and a member of this distinguished Society, I beg leave to call the attention of the assembly to a point of this interesting discussion in order to prevent a confusion that could induce the listener to include Brazil among the Latin American nations whose conduct in their ways of dealing with public debts has been blamed to-day.

The honorable professor from Indiana referred in general terms to the nations of Latin America. This could — however unintentionally on the part of the honorable professor — convey a less exact idea as to the line of conduct followed by some of the countries of Latin America.

Without intending to discuss the problem before us, without placing myself *pro* or *contra* — not entering at all upon the examination of the Drago Doctrine — I wish, nevertheless, to point out to this respectable audience that all the history of Brazil is widely open to examination to show that she has always fulfilled scrupulously all her engagements regarding the payment of the interests of her public debts, and the honesty of purposes of the Brazilian people will, no doubt, help the country to preserve for always her honorable traditions.

Professor HERSHEY. I think my reference was to some of the states of Latin America, and I certainly did not mean to include Brazil among those as having corrupt or unstable governments or judiciary.

REMARKS OF PROF. THEODORE P. ION,
OF BOSTON UNIVERSITY LAW SCHOOL, BOSTON, MASS.

Mr. Chairman: I shall make but a few remarks in connection with this question. Professor Hershey, of the Indiana University, has stated that the majority of the writers were against intervention. On the contrary, the consensus of opinion of the writers is in favor of intervention. It is true there are a few writers, among them Pradier Fodéré, the French writer, and Reveier, the Belgian writer, who are against intervention on the grounds of humanity; but generally the authors are in favor of intervention.

When a state is honestly unable to pay its debts, in that case I think there should be no intervention; but when there is bad faith no doubt other foreign states would have a right to intervene for the collection of debts. There is no difference between an individual claim and the claim of many people. If a state has a right to intervene in favor of one person why not intervene in favor of many persons?

Lord Palmerston held that Great Britain would have been justified in intervening in the affairs of Turkey on religious grounds, in favor of some Turkish protestants. That theory, however, has been entirely abandoned in modern times.

Vattel is also in favor of intervention on religious grounds, but that has been abandoned entirely now.

In regard to Mr. Kennedy's reference to Germany, with reference to employing force, I might mention the fact that after the war between Turkey and Greece, Germany suggested to the protecting powers, those powers that protected Greece against Turkey, that these powers would be willing to ask Turkey to leave Thessaly on condition that Greece would accept foreign control in favor of foreign creditors — German, English, and others. That was an indirect pressure. It was a kind of intervention in favor of foreign creditors.

In reply to Mr. Penfield, who has said, in substance, that states which owe public debts ought to be compelled by arbitrary award to pay their debts, I would say that that can not now be done without the consent or agreement of the powers to such an arbitration. If

the powers agree to arbitration on such matters, then of course it can be done with their consent; but under present circumstances they can not force intervention against any state simply because the matter will be referred to arbitration. It can not be referred to arbitration against the will of the state in present times.

REMARKS OF HARRY W. TEMPLE, ESQ.,
OF WASHINGTON, PA.

Mr. Chairman and Gentlemen: The Drago document, as I remember, did not purport to discuss a case, but a principle suggested by a case. It did mention that claims of spoliation might be the occasion of intervention in part, and in part contractual obligations, but it excluded those claims based on spoliation, and discussed the principle of the other claims.

Now, that of course makes it a matter of indifference, in discussing the abstract principle, what was the actual basis of the claim in spoliation. The contractual obligations are quite different from spoliation obligations. If an alien resident in a country is not protected by that country in his life or in his property, the country that owes his protection — his own country — may assert it, and punish the offending power for breach of treaty. That might be intervention. It might be war; but under the enforcement of the contract an entirely different question arises, and it is not a question altogether for the protecting power. First of all, the courts are there, and to intervene is instantly to throw discredit on the whole judiciary of the nation which is charged with failing to protect the aliens resident there; and one can very readily understand how Venezuela would considér that an insult, as implying that Venezuelan courts are not to be trusted.

That is not a question that is wholly a matter of the Latin American republics. At the same time, I could mention certain States of America, on the coast, and around the Great Lakes, that have actually repudiated their bonds. Although certain Englishmen hold some of those bonds, England has never sent her navy over here to collect that debt. I think I remember, also, that after the treaty of 1783

there was a considerable period when the courts of this country refused to give to British subjects the rights guaranteed by that treaty, and Great Britain did not interfere, but waited until the time came when in the Supreme Court of the United States it was decided that they must. But it was an American court that decided it, and not a British squadron.

REMARKS OF MR. SAMUEL J. BARROWS, OF NEW YORK CITY.

Mr. Chairman: It seems to me that it is an extremely dangerous proposition to give any sheriff the right to collect a debt without having some legal judgment beforehand.

We have had attempts made to use the army and navy of the United States to collect the debts of our citizens against South American states. Santo Domingo has been referred to, and I remember that we had a notable case in the Department of State just after the war, when I was there as Mr. Seward's secretary — the Alto Velo Case, with which you may not be familiar. In brief, it was this: There was a contest between two American citizens, a Baltimore firm and another firm, in regard to the working of guano on the island of Alto Velo, which is about four miles from Santo Domingo. The question between these two parties was a matter to be determined by the Supreme Court, but Judge Jeremiah Black, attorney for one of the parties, succeeded in getting through the Congress of the United States a resolution asking why the naval forces of the United States should not be sent down to take possession of that island. His contention was that his clients had discovered the island and therefore had the right to work the guano on it.

We went to work in the Department to study up the history of that island, and we looked back through all the histories we could find. We went through all the known maps of the New World, and finally found that the island was discovered by Christopher Columbus on his second voyage. That disposed of the claim of the American captain who rediscovered it in 1859, although Judge Black did say

in rejoinder that his clients had discovered the guano on it, at any rate, and therefore were entitled to it, without reference to the sovereignty of the country!

His contention shows how easy it is, when you have an army and navy at hand, to invoke their aid in collecting your claims. When we have the Hague Court properly constituted I do not see why all these cases can not be first submitted to judicial examination, and it will then be unnecessary, in most of them, to appeal to force.

REMARKS OF HON. JOHN W. FOSTER, OF WASHINGTON, D. C.

The CHAIRMAN. The Secretary seems very anxious to close this meeting, but I feel inclined to occupy a few minutes if no other gentleman desires to be heard. My views have been pretty well expressed by these five-minute speakers. They have been criticising these papers which have been read. I do not agree with all that has been advanced in these papers. I want to say this. Remember, it is not the Drago Doctrine; it is not the Calvo Doctrine, which has been discussed. Señor Drago, in his note, calls attention to the fact that the doctrine was announced by Alexander Hamilton more than a hundred years before. It has been the continuous doctrine of the Government of the United States, the nonenforcement of contractual claims, and these two distinguished gentlemen who have read their papers ought to remember the position of their Government on this subject.

The view which I wanted to present has been better expressed by one of the gentlemen than I can state it. We must remember the distinction between torts and contracts. Judge Penfield was eloquent about the violation of contracts; Brother Kennedy was eloquent on the subject of injuries done by revolutions. We ought to protect our citizens against torts, injuries, and injustice done them, but when they voluntarily go into a country and make contracts it is not our duty to follow them with the army and navy of the United States.

I make these remarks because I fear these papers will have a bad

effect unless we remember the position which our Government has taken on the subject in the past.

You will excuse the Chair for violating the privilege of his position.

Secretary Straus requests the Executive Council to meet at the Department of Commerce and Labor, just across the street, immediately after the adjournment of this afternoon.

I call your attention to the subject of discussion to-night, which is: "The rights of foreigners in the United States in case of conflict between Federal treaties and State laws." There will be papers and discussion, and the Secretary informs me that I can promise you an entertaining session. The Society will be adjourned until 8 o'clock to-night, in this hall.